

THE STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2015-04

**APPLICATION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

APPLICANT'S MOTION TO PARTIALLY WAIVE SITE 301.03(c)(3)-(5)

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (the “Applicant”) in support of its Application for a Certificate of Site and Facility For the Construction of a New 115 kV Electric Transmission Line from Madbury, New Hampshire to Portsmouth, New Hampshire (the “Project”), by and through its attorneys, McLane Middleton, Professional Association, and respectfully submit this request pursuant to Site 302.05 for a Waiver of New Hampshire Code of Administrative Rules Site 301.03(c)(3)-(5). In support of their Motion, the Applicant states as follows:

I. INTRODUCTION

The Site Evaluation Committee (“SEC”) recently adopted new rules in December 2015 directing applicants for all energy facilities to submit:

(3) The location, shown on a map, of property lines, residences, industrial buildings, and other structures and improvements within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property;

(4) Identification of wetlands and surface waters of the state within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

(5) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site; and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified;

Site 301.03(c)(3)–(5).¹

As part of its Application, the Applicant has identified all property lines, residences, industrial buildings, other structures and improvements, wetlands and surface waters, and natural, historic, cultural and other resources within the Project right-of-way (“ROW”) and adjacent to the Site. Based on the new rule, the Applicant, using the best available computer resources, mapping and technology, has also expanded the identification of all the resources listed in Site 301.03(c)(3)–(5) to the entire geographic area shown on their Project Maps irrespective of individual property boundaries. *See* Environmental Maps, Appendix 2; Existing Conditions Maps, Appendices 3, 4, 7; *see also* Archeological Reports, Appendices 8, 9; Historical Resources Reports, Appendices 10, 11, etc.

To further expand the amount of area displayed on these maps would require varying the scale of the map continuously along the route or selecting a scale that would accommodate the largest abutting property, which would make the data effectively unreadable. In most instances, the Applicant’s efforts captured abutting properties and in some cases went beyond abutting properties; however, there are some large abutting properties whose boundaries extend beyond the edges of the Project maps. Requiring the Applicant to strictly comply with the rules and identify all resources on every single abutting property—no matter how large the property—would be onerous and would not provide the Committee with any additional meaningful information to inform their decision about whether to issue a Certificate of Site and Facility. In

¹ The Applicant understands that the SEC interprets these rules to require the identification of resources across the entire width or along the entire length of any abutting property, regardless of the distance from the Project.

order to identify resources outside of the Project ROW, the Applicants would need to obtain the right to access the abutting properties from the landowners and conduct surveys within an area that is approximately three times the size of the Project ROW.

Accordingly, the Applicant hereby requests a waiver, in part, of the identification and mapping requirements set forth in 301.03(c)(3)–(5) chiefly because of the impediments to gathering such information and the practical limitations on presenting the various categories of required information in a format and scale that is meaningful to the reader.

II. DISCUSSION

The Committee’s rules provide that the SEC:

shall waive any of the provisions of this chapter, except where precluded by statute . . . upon request by an interested party, if the committee or subcommittee finds that:

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

Site 302.05(a). To determine whether the rule satisfies the public interest, the committee “shall waive a rule if: (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) The purpose of the rule would be satisfied by an alternative method proposed.” Site 302.05(b). As explained below, strict compliance with the newly adopted identification and mapping rules does not serve the public interest given the circumstances of a linear transmission Project, that compliance with the rule is onerous and excessively burdensome, and that the purpose of the rule will be satisfied by an alternative method.

A. Identification of Property Lines, Residences, Industrial Buildings, and Other Structures and Improvements

The Existing Conditions Maps display the residences, industrial buildings, and other structures and improvements within 300 feet of the Project centerline as depicted on a scale at 1 inch to 150 feet. As discussed in detail below, it is impractical and unreasonably burdensome to require the Applicant to map all property lines, residences, industrial buildings and other structures and improvements outside of the mapped area. For these reasons, the Applicant respectfully requests a partial waiver from this rule to the extent it requires the mapping of structures and improvements beyond what the Applicant has provided in their Application.

B. Identification of Wetlands and Surface Waters

As part of the Application, the Applicant has identified all wetlands and surface waters within or adjacent to the site as displayed on Existing Conditions Mapping, Appendices 2 through 4. The Applicant delineated the location and type of each waterbody within the site, defined as the Project ROW.

The recently adopted rule requires the Applicant to identify such wetlands and surface waters “within the site, on abutting property with respect to the site, and within 100 feet of the site if such distance extends beyond the boundary of any abutting property, except if and to the extent such identification is not possible due to lack of access to the relevant property and lack of other sources of the information to be identified.” Site 301.03(c)(4). “‘Abutting property’ means any property that is contiguous to or directly across a road, railroad, or stream from property on, under or above which an energy facility is located or proposed to be located.” Site 102.01. The rule contemplates requiring the Applicant to identify wetlands and surface waters on the entire abutting property, no matter the size.

To the extent possible, the Applicant identified wetlands and surface waters within 100 feet of the site through a combination of field delineation and interpretations of Project-specific contours and aerial photographs. Where field delineation could not be performed due to lack of access to private property,² the Applicant estimated the area of wetlands and surface waters through other sources of information that identify wetlands and surface waters, namely aerial photographs and project-specific topographic information.

To comply with Site 301.03(c)(4), the Applicant is submitting Existing Conditions Maps that also identify the location of wetlands and surface waters on abutting properties within approximately 1,000 feet on either side of the edge of the ROW. Again, because the Applicant lacks the right to access private abutting properties, the additional information displayed on these maps was obtained from USFWS National Wetland Inventory Maps. While the additional information is helpful, it does not reflect the same level of accuracy found in the fully delineated information for the Project site. Finally, as the distance from the Project increases, the usefulness of the overlay information decreases.

The Applicant has complied with the purpose of the rule, namely to identify wetlands and surface waters that may be affected by the Project. The submitted Existing Conditions Mapping identify the location of wetlands and surface waters using the best practical method to a distance of approximately 1,000 feet beyond the boundary of each side of the ROW. It is extremely unlikely that the Project, a linear transmission line, will have any effect on any fresh water body that is over 100 feet away, let alone 1,000 feet from the edge of the ROW—the Project will not discharge to surface waters or to groundwater, runoff from the Project will be appropriately controlled and directed away from surface waters and wetlands, and any soil disturbance will be

² The Applicants only have access to the adjoining PSNH ROW and to State property that abuts the Project.

restored after construction of the Project is complete. For the Little Bay crossing, the Sediment Dispersion Model, Modeling Sediment Dispersion from Cable Burial for Seacoast Reliability Project, Little Bay, New Hampshire, Appendix 35, shows the potential of the Project to affect the estuarine waters during the submarine cable installation. This report specifically depicts maps of Little Bay under various water quality conditions during the installation process. Supplemental mapping of Little Bay on aerial photographs will add minimal additional information. Requiring the Applicant to extend this analysis any farther would be a significant waste of resources without any corresponding benefit in assisting the SEC to review the Project.

Furthermore, should the SEC require the Applicant to strictly comply with Site 301.03(c)(4), the Applicant would have to increase the size and scale of their Existing Conditions Mapping. As one increases the scale to include more information from the USGS and NWI maps, the important and relevant information become less clear, which would be counterproductive.

A waiver of this rule will not disrupt the orderly and efficient resolution of matters before the Committee. In fact, providing additional maps beyond the approximate 1,000 foot edge of the Existing Conditions Mapping would not add any additional pertinent information and would only have the effect of shifting the Committee's analysis towards wetlands and surface waters that cannot reasonably be expected to be impacted.

C. Identification of Natural, Historic, Cultural, and Other Resources

a. Natural Resources

The Existing Conditions Maps, Appendices 3 and 7, depict the location of natural resources within the mapped area, typically 1,000 feet on each side of the ROW, as depicted on a scale at 1 inch to 400 feet.³ As discussed above, it is impractical and unreasonably burdensome to require the Applicant to map all natural resources outside of the mapped area. For that reason, the Applicant respectfully requests a partial waiver from this rule.

b. Historical and Archeological Resources

The Application identifies all existing historic properties within the area of potential effect—i.e., one-half mile on either side of the transmission line. *See Seacoast Reliability Project Preliminary Report: Historic Resources* (February 2015); *NH DHR Project Area Form (PAF)* (April 2016).

Extending the analysis beyond the area of potential effect set by DHR would be onerous for this Project and inapplicable due to the flat topography in in the surrounding area. Therefore, based on the above-referenced discussion, the Applicant requests a waiver from strict compliance of Site 301.03(c)(5) to the extent any historic properties exist outside of the one-half mile area of potential effect.

The Applicant has also completed an archeological desk review of abutting properties on each side of the corridor and within 100 feet of the site if such distance extended beyond the boundary of the abutting property. The results of this review are reported in the confidential

³ The Original Maps in the Rare, Threatened and Endangered Species and Exemplary Natural Communities Report also depict the location of certain rare species and exemplary natural communities within 1,000 feet on each side of the ROW. To the extent such resources are not contained under the sub-heading of natural resources, the Applicant also requests a similar waiver from requiring strict compliance with the rule and from requiring the Applicant to identify such natural resources outside of the already mapped area.

Desk Review of Archeological Sites on Abutting Properties, Appendix 8. See also Phase I-A Surveys and Addenda, Appendix 9, for a complete identification of archeological resources. Therefore, the Applicant is not requesting a waiver for this rule at this time.

III. Conclusion

Based on the above, the Applicant respectfully requests that the SEC grant a partial waiver of Site 301.03(c)(3)–(5). The Environmental Maps already contain property information for approximately within 300 feet on each side of the project corridor, and the Existing Conditions Maps, Archeological Reports and Historical Reports contain the required data up to approximately 1,000 feet on each side of the Project corridor. Requiring the Applicant to expand their maps beyond the existing boundaries is onerous and overly burdensome. Moreover, it does not provide any additional relevant data that would aid the Committee in making its decision. The partial waiver will not disrupt the orderly and efficient resolution of this proceeding.

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WHEREFORE, the Applicant respectfully requests that the Presiding Officer:

- A. Find that partial waiver of the mapping requirements found in Site 301.03(c)(3)-(5) serves the public interest;
- B. Find that a partial waiver will not disrupt the orderly and efficient resolution of matters before the subcommittee; and
- C. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

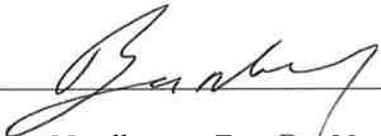
Public Service Company of New Hampshire d/b/a

Eversource Energy

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: April 12, 2016

By:  _____

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Certificate of Service

I hereby certify that on the 12th of April, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

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Barry Needleman